

1 AN ACT

2 RELATING TO REAL ESTATE LICENSURE; CHANGING DEFINED TERMS,  
3 INCLUDING THOSE FOR REAL ESTATE BROKERS AND SALESPERSONS;  
4 PROVIDING FOR ADDITIONAL COMMISSION POWERS, DISCLOSURE OF  
5 LICENSEE DUTIES AND CONSENT FOR SERVICE OF PROCESS; REVISING  
6 PROVISIONS FOR MAXIMUM ANNUAL PREMIUM FOR LIABILITY INSURANCE  
7 AND FOR REFUND OF LICENSE FEES; REVISING REQUIREMENTS FOR  
8 CONTINUING EDUCATION AND QUALIFICATIONS FOR LICENSEES;  
9 CREATING THE REAL ESTATE EDUCATION AND TRAINING FUND; MAKING  
10 AN APPROPRIATION.

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 Section 1. Section 61-29-1 NMSA 1978 (being Laws 1959,  
14 Chapter 226, Section 1, as amended) is amended to read:

15 "61-29-1. PROHIBITION.--It is unlawful for a person to  
16 engage in the business, act in the capacity of, advertise or  
17 display in any manner or otherwise assume to engage in the  
18 business of, or act as an associate broker or a qualifying  
19 broker within this state without a license issued by the  
20 commission. A person who engages in the business or acts in  
21 the capacity of an associate broker or a qualifying broker in  
22 this state, except as otherwise provided in Section 61-29-2  
23 NMSA 1978, with or without a New Mexico license, has thereby  
24 submitted to the jurisdiction of the state and to the  
25 administrative jurisdiction of the commission and is subject

1 to all penalties and remedies available for a violation of  
2 any provision of Chapter 61, Article 29 NMSA 1978."

3 Section 2. Section 61-29-2 NMSA 1978 (being Laws 1999,  
4 Chapter 127, Section 1, as amended) is amended to read:

5 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

6 A. As used in Chapter 61, Article 29 NMSA 1978:

7 (1) "agency relationship" means the  
8 fiduciary relationship created solely by an express written  
9 agency agreement between a person and a brokerage,  
10 authorizing the brokerage to act as an agent for the person  
11 according to the scope of authority granted in that express  
12 written agreement for real estate services subject to the  
13 jurisdiction of the commission;

14 (2) "agent" means the brokerage authorized,  
15 solely by means of an express written agreement, to act as a  
16 fiduciary for a person and to provide real estate services  
17 that are subject to the jurisdiction of the commission; in  
18 the case of an associate broker, "agent" means the person who  
19 has been authorized to act by that associate broker's  
20 qualifying broker;

21 (3) "associate broker" means a person who,  
22 for compensation or other valuable consideration, is  
23 associated with or engaged under contract by a qualifying  
24 broker to participate in an activity described in Paragraph  
25 (4) of this subsection or to carry on the qualifying broker's

1 business as a whole or partial vocation;

2 (4) "broker" or "qualifying broker" means a  
3 person who for compensation or other consideration from  
4 another:

5 (a) lists, sells or offers to sell real  
6 estate; buys or offers to buy real estate; or negotiates the  
7 purchase, sale or exchange of real estate or options on real  
8 estate;

9 (b) leases, rents or auctions or offers  
10 to lease, rent or auction real estate;

11 (c) advertises or holds himself out as  
12 being engaged in the business of buying, selling, exchanging,  
13 renting, leasing, auctioning or dealing with options on real  
14 estate for others as a whole or partial vocation; or

15 (d) engages in the business of charging  
16 an advance fee or contracting for collection of a fee in  
17 connection with a contract under which the broker or  
18 qualifying broker undertakes primarily to promote the sale of  
19 real estate through its listing in a publication issued  
20 primarily for that purpose or for the purpose of referral of  
21 information concerning real estate to brokers, qualifying  
22 brokers or associate brokers;

23 (5) "brokerage" means a licensed qualifying  
24 broker and the licensed real estate business represented by  
25 the qualifying broker and its affiliated licensees;

1 (6) "brokerage relationship" means the legal  
2 or contractual relationship between a person and a brokerage  
3 in a real estate transaction subject to the jurisdiction of  
4 the commission;

5 (7) "client" means a buyer, seller, landlord  
6 or tenant who has entered into an express written agreement  
7 with a brokerage for real estate services subject to the  
8 jurisdiction of the commission;

9 (8) "commission" means the New Mexico real  
10 estate commission;

11 (9) "customer" means a buyer, seller,  
12 landlord or tenant who uses real estate services without  
13 entering into an express written agreement with a brokerage  
14 subject to the jurisdiction of the commission;

15 (10) "license" means a qualifying broker's  
16 license or an associate broker's license issued by the  
17 commission;

18 (11) "licensee" means a person holding a  
19 valid qualifying broker's license or an associate broker's  
20 license subject to the jurisdiction of the commission;

21 (12) "real estate" means land, improvements,  
22 leaseholds and other interests in real property that are less  
23 than a fee simple ownership interest, whether tangible or  
24 intangible;

25 (13) "real estate salesperson" means a

1 person who, for compensation or other valuable consideration,  
2 is associated with or engaged under contract by a broker to  
3 participate in an activity described in Paragraph (4) of this  
4 subsection or to carry on the broker's business as a whole or  
5 partial vocation; and

6 (14) "transaction broker" means a qualifying  
7 broker, associate broker or brokerage that provides real  
8 estate services without entering into an agency relationship.

9 B. A single act of a person in performing or  
10 attempting to perform an activity described in Paragraph (4)  
11 of Subsection A of this section makes the person a qualifying  
12 broker. A single act of a person in performing or attempting  
13 to perform an activity described in Paragraph (3) of  
14 Subsection A of this section makes the person an associate  
15 broker.

16 C. The provisions of Chapter 61, Article 29 NMSA  
17 1978 do not apply to:

18 (1) a person who as owner or lessor performs  
19 any of the activities included in this section with reference  
20 to property owned or leased by the person, the employees of  
21 the owner or lessor or the employees of a qualifying broker  
22 acting on behalf of the owner or lessor, with respect to the  
23 property owned or leased, if the acts are performed in the  
24 regular course of or incident to the management of the  
25 property and the investments, except when the sale or

1 offering for sale or the lease or offering for lease of the  
2 property constitutes a subdivision containing one hundred or  
3 more parcels;

4 (2) isolated or sporadic transactions not  
5 exceeding two transactions annually in which a person acts as  
6 attorney-in-fact under a duly executed power of attorney  
7 delivered by an owner authorizing the person to finally  
8 consummate and to perform under any contract the sale,  
9 leasing or exchange of real estate on behalf of the owner;  
10 and the owner or attorney-in-fact has not used a power of  
11 attorney for the purpose of evading the provisions of Chapter  
12 61, Article 29 NMSA 1978;

13 (3) transactions in which a person acts as  
14 attorney-in-fact under a duly executed power of attorney  
15 delivered by an owner related to the attorney-in-fact within  
16 the fourth degree of consanguinity or closer, authorizing the  
17 person to finally consummate and to perform under any  
18 contract for the sale, leasing or exchange of real estate on  
19 behalf of the owner;

20 (4) the services rendered by an attorney at  
21 law in the performance of the attorney's duties as an  
22 attorney at law;

23 (5) a person acting in the capacity of a  
24 receiver, trustee in bankruptcy, administrator or executor, a  
25 person selling real estate pursuant to an order of any court

1 or a trustee acting under a trust agreement, deed of trust or  
2 will or the regular salaried employee of a trustee;

3 (6) the activities of a salaried employee of  
4 a governmental agency acting within the scope of employment;  
5 or

6 (7) persons who deal exclusively in mineral  
7 leases or the sale or purchase of mineral rights or royalties  
8 in any case in which the fee to the land or the surface  
9 rights are in no way involved in the transaction."

10 Section 3. Section 61-29-4 NMSA 1978 (being Laws 1959,  
11 Chapter 226, Section 3, as amended by Laws 2003, Chapter 22,  
12 Section 1 and by Laws 2003, Chapter 408, Section 30) is  
13 amended to read:

14 "61-29-4. CREATION OF COMMISSION--POWERS AND DUTIES.--  
15 There is created the "New Mexico real estate commission".  
16 The commission shall be appointed by the governor and shall  
17 consist of five members who shall have been residents of the  
18 state for three consecutive years immediately prior to their  
19 appointment, four of whom shall have been associate brokers  
20 or qualifying brokers licensed in New Mexico and one of whom  
21 shall be a member of the public who has never been licensed  
22 as an associate broker or a qualifying broker; provided that  
23 not more than one member shall be from any one county within  
24 the state. The members of the commission shall serve for a  
25 period of five years or until their successors are appointed

1 and qualified. The governor may remove a member for cause.  
2 In the event of vacancies, the governor shall appoint members  
3 to complete unexpired terms. The commission shall possess  
4 all the powers and perform all the duties prescribed by  
5 Chapter 61, Article 29 NMSA 1978 and as otherwise provided by  
6 law, and it is expressly vested with power and authority to  
7 make and enforce rules to carry out the provisions of that  
8 article. Prior to a final action on a proposed change or  
9 amendment to the rules of the commission, the commission may  
10 publish notice of the proposed action in its official  
11 publication, distribute the publication to each active  
12 licensee and give the time and place for a public hearing on  
13 the proposed changes. The hearing shall be held at least  
14 thirty days prior to a proposed final action. Changes or  
15 amendments to the rules shall be filed in accordance with the  
16 procedures of the State Rules Act and shall become effective  
17 thirty days after notification to all active licensees of the  
18 filing of the changes or amendments."

19 Section 4. Section 61-29-4.1 NMSA 1978 (being Laws  
20 1985, Chapter 89, Section 1, as amended) is amended to read:

21 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING  
22 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.-- The commission  
23 shall adopt rules providing for continuing education courses  
24 in selling, leasing or managing residential, commercial and  
25 industrial property as well as courses in basic real estate

1 law and practice, and other courses prescribed by the  
2 commission. The regulations shall require that every  
3 licensee except licensees who are sixty-five years of age or  
4 older and who have a minimum of twenty years' continuously  
5 licensed experience in the selling, leasing or managing of  
6 real property, as a condition of his license renewal, shall  
7 successfully complete thirty classroom hours of instruction  
8 every three years in courses approved by the commission. The  
9 rules may prescribe areas of specialty or expertise and may  
10 require that part of the classroom instruction be devoted to  
11 courses in the area of a licensee's specialty or expertise."

12 Section 5. Section 61-29-4.2 NMSA 1978 (being Laws  
13 2001, Chapter 216, Section 1) is amended to read:

14 "61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--  
15 PROFESSIONAL LIABILITY INSURANCE--MINIMUM COVERAGE.--

16 A. In addition to the powers and duties granted to  
17 the commission pursuant to the provisions of Sections 61-29-4  
18 and 61-29-4.1 NMSA 1978, the commission may adopt rules that  
19 require professional liability insurance coverage and may  
20 establish the minimum terms and conditions of coverage,  
21 including limits of coverage and permitted exceptions. If  
22 adopted by the commission, the rules shall require every  
23 applicant for an active license and licensee who applies for  
24 renewal of an active license to provide the commission with  
25 satisfactory evidence that he has professional liability

1 insurance coverage that meets the minimum terms and  
2 conditions required by commission rule.

3 B. The commission is authorized to solicit sealed,  
4 competitive proposals from insurance carriers to provide a  
5 group professional liability insurance policy that complies  
6 with the terms and conditions established by commission rule.  
7 The commission may approve one or more policies that comply  
8 with the commission rules; provided that the maximum annual  
9 premium shall not exceed two hundred dollars (\$200) for a  
10 licensee, that the minimum coverage shall not be less than  
11 one hundred thousand dollars (\$100,000) for an individual  
12 claim and not less than a five hundred thousand dollar  
13 (\$500,000) aggregate limit per policy and that the deductible  
14 shall not be greater than one thousand dollars (\$1,000).

15 C. Rules adopted by the commission shall permit an  
16 active licensee to satisfy any requirement for professional  
17 liability insurance coverage by purchasing an individual  
18 policy.

19 D. Rules adopted by the commission shall provide  
20 that there shall not be a requirement for a licensee to have  
21 professional liability insurance coverage during a period  
22 when a group policy, as provided in Subsection B of this  
23 section, is not in effect."

24 Section 6. A new section of Chapter 61, Article 29 NMSA  
25 1978 is enacted to read:

1 "ADDITIONAL POWERS OF COMMISSION--CRIMINAL BACKGROUND  
2 CHECKS.--The commission may require license applicants, as a  
3 condition of licensure, to submit to criminal background  
4 checks."

5 Section 7. Section 61-29-5 NMSA 1978 (being Laws 1959,  
6 Chapter 226, Section 4, as amended) is amended to read:

7 "61-29-5. ORGANIZATION OF COMMISSION.--The commission  
8 shall organize by electing a president, vice president and  
9 secretary from its members. A majority of the commission  
10 shall constitute a quorum and may exercise all powers and  
11 duties devolving upon it and do all things necessary to carry  
12 into effect the provisions of Chapter 61, Article 29 NMSA  
13 1978. The secretary of the commission shall keep a record of  
14 its proceedings; a register of persons licensed as associate  
15 brokers and qualifying brokers, showing the name and place of  
16 business of each and the date and number of each person's  
17 license; and a record of all licenses issued, denied,  
18 suspended or revoked. This record shall be open to public  
19 inspection at all reasonable times."

20 Section 8. Section 61-29-6 NMSA 1978 (being Laws 1959,  
21 Chapter 226, Section 5) is amended to read:

22 "61-29-6. MEETING OF THE COMMISSION.--The commission  
23 shall meet at least once each quarter-year at such time and  
24 place as may be designated by the commission president, and  
25 special meetings may be held upon five days' written notice

1 to each of the commission members by the commission  
2 president."

3 Section 9. Section 61-29-8 NMSA 1978 (being Laws 1959,  
4 Chapter 226, Section 7, as amended) is amended to read:

5 "61-29-8. LICENSE FEES--DISPOSITION.--

6 A. The following fees shall be established and  
7 charged by the commission and paid into the real estate  
8 commission fund:

9 (1) for each examination, a fee not to  
10 exceed ninety-five dollars (\$95.00);

11 (2) for each qualifying broker's license  
12 issued, a fee not to exceed two hundred seventy dollars  
13 (\$270) and for each renewal thereof, a fee not to exceed two  
14 hundred seventy dollars (\$270);

15 (3) for each associate broker's license  
16 issued, a fee not to exceed two hundred seventy dollars  
17 (\$270) and for each renewal thereof, a fee not to exceed two  
18 hundred seventy dollars (\$270);

19 (4) subject to the provisions of Paragraph  
20 (10) of this subsection, for each change of place of business  
21 or change of employer or contractual associate, a transfer  
22 fee not to exceed twenty dollars (\$20.00);

23 (5) for each duplicate license, where the  
24 license is lost or destroyed and affidavit is made thereof, a  
25 fee not to exceed twenty dollars (\$20.00);

1 (6) for each license history, a fee not to  
2 exceed twenty-five dollars (\$25.00);

3 (7) for copying of documents by the  
4 commission, a fee not to exceed one dollar (\$1.00) per copy;

5 (8) for each license law and rules booklet,  
6 a fee not to exceed ten dollars (\$10.00) per booklet;

7 (9) for each hard copy or electronic list of  
8 licensed associate brokers and qualifying brokers, a fee not  
9 to exceed twenty dollars (\$20.00);

10 (10) for each license reissued for an  
11 associate broker because of change of address of the  
12 qualifying broker's office, death of the qualifying broker  
13 when a successor qualifying broker is replacing the decedent  
14 and the associate broker remains in the office or because of  
15 a change of name of the office or the entity of the  
16 qualifying broker, a fee in an amount not to exceed twenty  
17 dollars (\$20.00) to be paid by the qualifying broker or  
18 successor qualifying broker as the case may be; but if there  
19 are eleven or more affected associate brokers in the  
20 qualifying broker's office, the total fee paid to effect  
21 reissuance of all of those licenses shall not exceed two  
22 hundred dollars (\$200);

23 (11) for each application to the commission  
24 to become an approved sponsor of pre-licensing and continuing  
25 education courses, a fee not to exceed five hundred dollars

1 (\$500) and for each renewal thereof, a fee not to exceed five  
2 hundred dollars (\$500);

3 (12) for each application to the commission  
4 to become an approved instructor of pre-licensing and  
5 continuing education courses, a fee not to exceed seventy  
6 dollars (\$70.00) per course; and

7 (13) for each application to the commission  
8 to renew certification as a commission-approved instructor, a  
9 fee not to exceed one hundred dollars (\$100).

10 B. All fees set by the commission shall be set by  
11 rule and only after all requirements have been met as  
12 prescribed by Chapter 61, Article 29 NMSA 1978. Any changes  
13 or amendments to the rules shall be filed in accordance with  
14 the State Rules Act.

15 C. The commission shall deposit all money received  
16 by it from fees in accordance with the provisions of Chapter  
17 61, Article 29 NMSA 1978 with the state treasurer, who shall  
18 keep that money in a separate fund to be known as the "real  
19 estate commission fund", and money so deposited in that fund  
20 is appropriated to the commission for the purpose of carrying  
21 out the provisions of Section 61-29-4 NMSA 1978 or to  
22 maintain the real estate recovery fund as required by the  
23 Real Estate Recovery Fund Act and shall be paid out of the  
24 fund upon the vouchers of the executive secretary of the  
25 commission or his designee; provided that the total fees and

1 charges collected and paid into the state treasury and any  
2 money so deposited shall be expended only for the purposes  
3 authorized by Chapter 61, Article 29 NMSA 1978."

4 Section 10. Section 61-29-9 NMSA 1978 (being Laws 1959,  
5 Chapter 226, Section 8, as amended by Laws 2003, Chapter 22,  
6 Section 4 and by Laws 2003, Chapter 329, Section 1) is  
7 amended to read:

8 "61-29-9. QUALIFICATIONS FOR LICENSE.--

9 A. Licenses shall be granted only to persons who  
10 meet the requirements for licensure prescribed by law and are  
11 deemed by the commission to be of good repute and competent  
12 to transact the business of a qualifying broker or an  
13 associate broker in a manner that safeguards the interests of  
14 the public.

15 B. An applicant for a qualifying broker's license  
16 or an associate broker's license shall be a legal resident of  
17 the United States and have reached the age of majority. Each  
18 applicant for a qualifying broker's license or an associate  
19 broker's license shall have passed the real estate  
20 examination approved by the commission and shall:

21 (1) furnish the commission with a  
22 certificate that the applicant has completed successfully  
23 ninety classroom hours of instruction in basic real estate  
24 courses approved by the commission, thirty hours of which  
25 shall have been a broker basics course; or

1                   (2) furnish the commission with a  
2 certificate that the applicant is a duly licensed real estate  
3 broker in good standing in another state; provided that the  
4 applicant has successfully completed ninety classroom hours  
5 of instruction in basic real estate courses approved by the  
6 commission, thirty hours of which shall have been a broker  
7 basics course.

8                   C. An applicant for a qualifying broker's license  
9 shall have been actively engaged in the real estate business  
10 as an associate broker or real estate salesperson for at  
11 least two of the last five years immediately preceding  
12 application for a qualifying broker's license and furnish the  
13 commission proof that the applicant has completed  
14 successfully one hundred twenty hours of prelicensing  
15 courses, including a broker basics course, approved by the  
16 commission.

17                   D. A licensee holding a current real estate  
18 salesperson's license on the effective date of this 2005 act  
19 shall automatically qualify for an associate broker's license  
20 without any additional requirements. However, to be eligible  
21 to apply for a qualifying broker's license, a real estate  
22 salesperson obtaining an associate broker's license pursuant  
23 to this subsection shall, in addition to meeting all other  
24 requirements for a qualifying broker's license, pass a real  
25 estate broker's examination approved by the commission.

1           E. The commission shall require the information it  
2 deems necessary from every applicant to determine that  
3 applicant's honesty, trustworthiness and competency.  
4 Corporations, partnerships or associations may hold a  
5 qualifying broker's license issued in the name of the  
6 corporation, partnership or association; provided that at  
7 least one member of the partnership or association or one  
8 officer or employee of a corporation who actively engages in  
9 the real estate business first secures a qualifying broker's  
10 license. The license shall be issued in the name of the  
11 corporation, partnership or association, naming the partner,  
12 associate, officer or employee as qualifying broker for the  
13 corporation, partnership or association."

14           Section 11. Section 61-29-10 NMSA 1978 (being Laws  
15 1959, Chapter 226, Section 9, as amended) is amended to read:

16           "61-29-10. APPLICATION FOR LICENSE AND EXAMINATION.--

17           A. All applications for licenses to act as  
18 qualifying brokers and associate brokers shall be made in  
19 writing to the commission and shall contain such data and  
20 information as may be required upon a form to be prescribed  
21 and furnished by the commission. The application shall be  
22 accompanied by:

23                   (1) the recommendation of two reputable  
24 citizens who own real estate in the county in which the  
25 applicant resides, which recommendation shall certify that

1 the applicant is of good moral character, honest and  
2 trustworthy; and

3 (2) the triennial license fee prescribed by  
4 the commission.

5 B. In addition to proof of honesty,  
6 trustworthiness and good reputation, an applicant shall pass  
7 a written examination approved by the commission. The  
8 examination shall be given at the time and places within the  
9 state as the commission shall prescribe; however, the  
10 examination shall be given not less than two times during  
11 each calendar year. The examination shall include business  
12 ethics, writing, composition, arithmetic, elementary  
13 principles of land economics and appraisals, a general  
14 knowledge of the statutes of this state relating to deeds,  
15 mortgages, contracts of sale, agency and brokerage and the  
16 provisions of Chapter 61, Article 29 NMSA 1978.

17 C. An applicant is not permitted to engage in the  
18 real estate business until the applicant has passed the  
19 approved examination, complied with the other requirements of  
20 Chapter 61, Article 29 NMSA 1978, and until a license has  
21 been issued to the applicant.

22 D. Notice of passing or failing to pass the  
23 examination shall be given to an applicant not later than  
24 three weeks following the date of the examination.

25 E. The commission may establish educational

1 programs and procure qualified personnel, facilities and  
2 materials for the instruction of persons desiring to become  
3 qualifying brokers or associate brokers or desiring to  
4 improve their proficiency as qualifying brokers or associate  
5 brokers. The commission may inspect and accredit educational  
6 programs and courses of study and may establish standards of  
7 accreditation for educational programs conducted in this  
8 state. The expenses incurred by the commission in activities  
9 authorized pursuant to this subsection shall not exceed the  
10 total revenues received and accumulated by the commission."

11 Section 12. Section 61-29-10.2 NMSA 1978 (being Laws  
12 1999, Chapter 127, Section 3, as amended) is amended to read:

13 "61-29-10.2. LICENSEE'S DUTIES--DISCLOSURE.--

14 A. Prior to the time a licensee generates or  
15 presents any written document that has the potential to  
16 become an express written agreement, the licensee shall give  
17 to a prospective buyer, seller, landlord or tenant a list of  
18 the licensee's duties that are in accordance with  
19 requirements established by the commission.

20 B. Licensees shall perform all duties that are  
21 established for licensees by the commission."

22 Section 13. Section 61-29-11 NMSA 1978 (being Laws  
23 1959, Chapter 226, Section 10, as amended) is amended to  
24 read:

25 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF

1 LICENSES.--

2 A. The commission shall issue to each qualified  
3 applicant a license in the form and size prescribed by the  
4 commission.

5 B. The license shall show the name and address of  
6 the licensee. An associate broker's license shall show the  
7 name of the qualifying broker by whom the associate broker is  
8 engaged. The commission shall deliver or mail the license of  
9 the associate broker to the qualifying broker by whom the  
10 associate broker is engaged, and the qualifying broker shall  
11 display the license at the brokerage from which the associate  
12 broker will be conducting real estate business on behalf of  
13 the brokerage. The license of the associate broker shall  
14 remain in the custody and control of the qualifying broker as  
15 long as the associate broker is engaged by that qualifying  
16 broker.

17 C. Every license shall be renewed every three  
18 years on or before the last day of the month following the  
19 licensee's month of birth. Upon written request for renewal  
20 by the licensee, the commission shall certify renewal of a  
21 license if there is no reason or condition that might warrant  
22 the refusal of the renewal of a license. The licensee shall  
23 provide proof of compliance with continuing education  
24 requirements and pay the renewal fee. If a licensee has not  
25 made application for renewal of license, furnished proof of

1 compliance with continuing education requirements and paid  
2 the renewal fee by the license renewal date, the license  
3 shall expire. The commission may require a person whose  
4 license has expired to apply for a license as if the person  
5 had not been previously licensed under Chapter 61, Article 29  
6 NMSA 1978 and further require that the person be reexamined.  
7 The commission shall require a person whose license has  
8 expired to pay when the person applies for a license, in  
9 addition to any other fee, a late fee. If during a period of  
10 one year from the date the license expires the person or the  
11 person's spouse is either absent from this state on active  
12 duty military service or the person is suffering from an  
13 illness or injury of such severity that the person is  
14 physically or mentally incapable of making application for a  
15 license, payment of the late fee and reexamination shall not  
16 be required by the commission if, within three months of the  
17 person's permanent return to this state or sufficient  
18 recovery from illness or injury to allow the person to make  
19 an application, the person makes application to the  
20 commission for a license. A copy of that person's or that  
21 person's spouse's military orders or a certificate from the  
22 applicant's physician shall accompany the application. A  
23 person excused by reason of active duty military service,  
24 illness or injury as provided for in this subsection may make  
25 application for a license without imposition of the late fee.

1 All fees collected pursuant to this subsection shall be  
2 disposed of in accordance with the provisions of Section  
3 61-29-8 NMSA 1978. The revocation of a qualifying broker's  
4 license automatically suspends every associate broker's  
5 license granted to any person by virtue of association with  
6 the qualifying broker whose license has been revoked, pending  
7 a change of qualifying broker. Upon the naming of a new  
8 qualifying broker, the suspended license shall be reactivated  
9 without charge if granted during the three-year renewal  
10 cycle.

11 D. A qualifying broker shall conduct brokerage  
12 business under the trade name and from the brokerage address  
13 registered with the commission. Every brokerage shall have a  
14 qualifying broker in charge. The license of the qualifying  
15 broker and each associate broker associated with that  
16 qualifying broker shall be prominently displayed in each  
17 brokerage office. The address of the office shall be  
18 designated in the qualifying broker's license, and a license  
19 issued shall not authorize the licensee to transact real  
20 estate business at any other address. In case of removal  
21 from the designated address, the licensee shall make  
22 application to the commission before the removal or within  
23 ten days thereafter, designating the new location of the  
24 licensee's office and paying the required fee, whereupon the  
25 commission shall issue a license for the new location if the

1 new location complies with the terms of Chapter 61, Article  
2 29 NMSA 1978. A qualifying broker shall maintain a sign at  
3 the brokerage office of such size and content as the  
4 commission prescribes.

5 E. When an associate broker is discharged or  
6 terminates association or employment with the qualifying  
7 broker with whom the associate broker is associated, the  
8 qualifying broker shall deliver or mail the associate  
9 broker's license to the commission within forty-eight hours.  
10 The commission shall hold the license on inactive status. It  
11 is unlawful for an associate broker to perform any of the  
12 acts authorized by Chapter 61, Article 29 NMSA 1978 either  
13 directly or indirectly under authority of an inactive license  
14 after the associate broker's association with a qualifying  
15 broker has been terminated and the associate broker's license  
16 has been returned to the commission until the appropriate fee  
17 has been paid and the license has been reissued and  
18 reactivated by the commission."

19 Section 14. Section 61-29-12 NMSA 1978 (being Laws  
20 1959, Chapter 226, Section 11, as amended) is amended to  
21 read:

22 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE  
23 FOR CAUSES ENUMERATED.--

24 A. The commission may refuse to issue a license or  
25 may suspend, revoke, limit or condition a license if the

1 applicant or licensee has by false or fraudulent  
2 representations obtained a license or, in performing or  
3 attempting to perform any of the actions specified in Chapter  
4 61, Article 29 NMSA 1978, an applicant or licensee has:

5 (1) made a substantial misrepresentation;

6 (2) pursued a continued and flagrant course  
7 of misrepresentation; made false promises through agents,  
8 salespersons, advertising or otherwise; or used any trade  
9 name or insignia of membership in any real estate  
10 organization of which the licensee is not a member;

11 (3) paid or received a rebate, profit,  
12 compensation or commission to or from any unlicensed person,  
13 except the licensee's principal or other party to the  
14 transaction, and then only with that principal's written  
15 consent;

16 (4) represented or attempted to represent a  
17 qualifying broker other than a qualifying broker with whom  
18 the licensee is associated without the express knowledge and  
19 consent of that qualifying broker;

20 (5) failed, within a reasonable time, to  
21 account for or to remit any money coming into the licensee's  
22 possession that belongs to others, commingled funds of others  
23 with the licensee's own or failed to keep funds of others in  
24 an escrow or trustee account or failed to furnish legible  
25 copies of all listing and sales contracts to all parties

1 executing them;

2 (6) been convicted in any court of competent  
3 jurisdiction of a felony or any offense involving moral  
4 turpitude;

5 (7) employed or compensated directly or  
6 indirectly a person for performing any of the acts regulated  
7 by Chapter 61, Article 29 NMSA 1978 who is not a licensed  
8 qualifying broker or an associate broker; provided, however,  
9 that a qualifying broker may pay a commission to a qualifying  
10 broker of another state; provided further that the  
11 nonresident broker shall not conduct in this state any of the  
12 negotiations for which a fee, compensation or commission is  
13 paid except in cooperation with a licensed qualifying broker  
14 of this state;

15 (8) failed, if a qualifying broker, to place  
16 as soon after receipt as is practicably possible, after  
17 securing signatures of all parties to the transaction, any  
18 deposit money or other money received by the qualifying  
19 broker in a real estate transaction in a custodial, trust or  
20 escrow account, maintained by the qualifying broker in a bank  
21 or savings and loan institution or title company authorized  
22 to do business in this state, in which the funds shall be  
23 kept until the transaction is consummated or otherwise  
24 terminated, at which time a full accounting of the funds  
25 shall be made by the qualifying broker. Records relative to

1 the deposit, maintenance and withdrawal of the funds shall  
2 contain information as may be prescribed by the rules of the  
3 commission. Nothing in this paragraph prohibits a qualifying  
4 broker from depositing nontrust funds in an amount not to  
5 exceed the required minimum balance in each trust account so  
6 as to meet the minimum balance requirements of the bank  
7 necessary to maintain the account and avoid charges. The  
8 minimum balance deposit shall not be considered commingling  
9 and shall not be subject to levy, attachment or garnishment.  
10 This paragraph does not prohibit a qualifying broker from  
11 depositing any deposit money or other money received by the  
12 qualifying broker in a real estate transaction with another  
13 cooperating broker who shall in turn comply with this  
14 paragraph;

15 (9) failed, if an associate broker, to place  
16 as soon after receipt as is practicably possible in the  
17 custody of the associate broker's qualifying broker, after  
18 securing signatures of all parties to the transaction, any  
19 deposit money or other money entrusted to the associate  
20 broker by any person dealing with the associate broker as the  
21 representative of the qualifying broker;

22 (10) violated a provision of Chapter 61,  
23 Article 29 NMSA 1978 or a rule promulgated by the commission;

24 (11) committed an act, whether of the same  
25 or different character from that specified in this

1 subsection, that is related to dealings as a qualifying  
2 broker or an associate broker and that constitutes or  
3 demonstrates bad faith, incompetency, untrustworthiness,  
4 impropriety, fraud, dishonesty, negligence or any unlawful  
5 act; or

6 (12) been the subject of disciplinary action  
7 as a licensee while licensed to practice real estate in  
8 another jurisdiction, territory or possession of the United  
9 States or another country.

10 B. An unlawful act or violation of Chapter 61,  
11 Article 29 NMSA 1978 by an associate broker, employee,  
12 partner or associate of a qualifying broker shall not be  
13 cause for the revocation of a license of the qualifying  
14 broker unless it appears to the satisfaction of the  
15 commission that the qualifying broker had guilty knowledge of  
16 the unlawful act or violation."

17 Section 15. A new section of Chapter 61, Article 29  
18 NMSA 1978 is enacted to read:

19 "NONRESIDENT LICENSEES--CONSENT TO SERVICE.--A  
20 nonresident associate broker or qualifying broker shall file  
21 with the commission an irrevocable consent that lawsuits and  
22 actions may be commenced against the nonresident associate  
23 broker or qualifying broker in the proper court of any county  
24 of this state in which a cause of action may arise or in  
25 which the plaintiff may reside, by service on the commission

1 of any process or pleadings authorized by the laws of this  
2 state, the consent stipulating and agreeing that such service  
3 of process or pleadings on the commission is as valid and  
4 binding as if personal service had been made upon the  
5 nonresident licensee in New Mexico. The instrument  
6 containing the consent shall be acknowledged and, if executed  
7 on behalf of a corporation or association, shall be  
8 accompanied by a certified copy of the resolution of the  
9 proper officers or managing board authorizing the executing  
10 officer to execute the instrument. Service of process or  
11 pleadings shall be served in duplicate upon the commission;  
12 one shall be filed in the office of the commission and the  
13 other immediately forwarded by certified mail to the main  
14 office of the nonresident licensee against whom the process  
15 or pleadings are directed."

16 Section 16. Section 61-29-16 NMSA 1978 (being Laws  
17 1959, Chapter 226, Section 15) is amended to read:

18 "61-29-16. SUIT BY QUALIFYING OR ASSOCIATE BROKER.--No  
19 action for the collection of a commission or compensation  
20 earned by any person as a qualifying broker or an associate  
21 broker required to be licensed under the provisions of  
22 Chapter 61, Article 29 NMSA 1978 shall be maintained in the  
23 courts of the state unless such person was a duly licensed  
24 qualifying broker or associate broker at the time the alleged  
25 cause of action arose. In any event, suit against a member

1 of the public as distinguished from any person licensed under  
2 Chapter 61, Article 29 NMSA 1978 shall be maintained only in  
3 the name of the qualifying broker."

4 Section 17. Section 61-29-18 NMSA 1978 (being Laws  
5 1959, Chapter 226, Section 18) is amended to read:

6 "61-29-18. INTERPRETATION OF ACT.--Nothing contained in  
7 Chapter 61, Article 29 NMSA 1978 shall affect the power of  
8 cities and villages to tax, license and regulate qualifying  
9 brokers or associate brokers. The requirements hereof shall  
10 be in addition to the requirements of an existing or future  
11 ordinance of any city or village so taxing, licensing or  
12 regulating qualifying brokers or associate brokers."

13 Section 18. Section 61-29-23 NMSA 1978 (being Laws  
14 1980, Chapter 82, Section 4, as amended) is amended to read:

15 "61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE  
16 BROKER--PETITION--REQUIREMENTS--RECOVERY LIMITATIONS.--

17 A. When any aggrieved person claims a pecuniary  
18 loss caused by a state-licensed qualifying broker or  
19 associate broker based upon fraud, knowing or willful  
20 misrepresentation or wrongful conversion of funds entrusted  
21 to the qualifying broker or associate broker, which loss  
22 arose out of any transaction for which a qualifying broker's  
23 or an associate broker's license is required and arose out of  
24 or during the course of a transaction involving the sale,  
25 lease, exchange or other disposition of real estate, where

1 the cause of action arose on or after July 1, 1980, that  
2 person may, within one year after obtaining a final judgment  
3 based upon fraud, knowing or willful misrepresentation or  
4 wrongful conversion of funds entrusted to the qualifying  
5 broker or associate broker and the termination of all  
6 proceedings, including appeals in connection with the  
7 judgment, file a verified petition with the commission for  
8 payment from the real estate recovery fund for the actual  
9 damages included in the judgment and unpaid, but not more  
10 than ten thousand dollars (\$10,000) per judgment regardless  
11 of the number of persons aggrieved or parcels of real estate  
12 involved in the transaction. The aggregate amount  
13 recoverable by all claimants for losses caused by any one  
14 licensee shall not exceed thirty thousand dollars (\$30,000).

15 B. A copy of the petition shall be served upon the  
16 commission in the manner provided by law for service of a  
17 civil summons.

18 C. The commission shall conduct a hearing on the  
19 petition after service of the petition upon the commission.  
20 At the hearing, the petitioner shall be required to show that  
21 the petitioner:

22 (1) is not the spouse of the judgment  
23 debtor, the personal representative of the spouse or related  
24 to the third degree of consanguinity or affinity to the  
25 licensee whose conduct is alleged to have caused the loss;

1                   (2) has complied with all the requirements  
2 of the Real Estate Recovery Fund Act;

3                   (3) has obtained a judgment of the kind  
4 described in Subsection A of this section, the amount awarded  
5 and the amount owing at the date of the petition;

6                   (4) has had execution issued upon the  
7 judgment and that the officer executing the writ has made a  
8 return showing that the judgment debtor has no property  
9 within the state subject to execution. If execution is  
10 levied against the property of the judgment debtor, the  
11 petitioner shall show that the amount realized on the sale  
12 was insufficient to satisfy the judgment and shall set forth  
13 the amount realized from the sale and the balance remaining  
14 due on the judgment after application of the amount realized;

15                   (5) has made reasonable searches and  
16 inquiries to ascertain whether the judgment debtor is  
17 possessed of real or personal property or other assets liable  
18 to be sold or applied in satisfaction of the judgment,  
19 including partnership assets, licensee's estate or any bond  
20 or insurance, and that the petitioner has exercised  
21 reasonable diligence to secure payment of the judgment from  
22 the assets of the judgment debtor; and

23                   (6) has a judgment that is not:

24                                 (a) covered by any bond, insurance,  
25 surety agreement or indemnity agreement;

1 (b) a loss incurred by a partner, joint  
2 venturer, employer, employee or associate of the licensee  
3 whose conduct is alleged to have caused the loss; or a  
4 corporate officer or director of a corporation in which the  
5 judgment debtor is also an officer, director or employee; or

6 (c) a loss incurred by any business or  
7 other entity in which the licensee whose conduct is alleged  
8 to have caused the loss has any interest at the time of the  
9 conduct alleged to have caused the loss."

10 Section 19. Section 61-29-27 NMSA 1978 (being Laws  
11 1980, Chapter 82, Section 8, as amended) is amended to read:

12 "61-29-27. SUBROGATION.--When the commission makes any  
13 payment from the real estate recovery fund to a judgment  
14 creditor, the commission shall be subrogated to all rights of  
15 the judgment creditor for the amounts paid out of the fund  
16 and any amount and interest so recovered by the commission  
17 shall be deposited in the fund. The commission may, pursuant  
18 to the provisions of the Uniform Licensing Act, revoke,  
19 suspend or refuse to renew the license of any qualifying  
20 broker or associate broker for whom payment from the fund has  
21 been made in accordance with the provisions of the Real  
22 Estate Recovery Fund Act. Further, the commission may refuse  
23 to issue or renew the license of any person for whom payment  
24 from the real estate recovery fund has been made, until that  
25 person reimburses the fund for all payments made on that

1 person's behalf."

2 Section 20. A new section of Chapter 61, Article 29  
3 NMSA 1978 is enacted to read:

4 "REAL ESTATE EDUCATION AND TRAINING FUND CREATED--  
5 PURPOSE--APPROPRIATION.--

6 A. The "real estate education and training fund"  
7 is created in the state treasury. The fund shall consist of  
8 an initial transfer of the balance in the real estate  
9 recovery fund as provided in Subsection C of this section;  
10 legislative appropriations to the fund; fees charged by the  
11 commission for approval of real estate education sponsors,  
12 courses and instructors; gifts, grants, donations and  
13 bequests to the fund; and income from investment of the fund.  
14 Money in the fund shall not revert to any other fund at the  
15 end of a fiscal year.

16 B. The fund shall be administered by the  
17 commission, and money in the fund is subject to appropriation  
18 by the legislature to the commission to improve real estate  
19 education and to train real estate instructors. The  
20 commission shall promulgate rules specifying the manner in  
21 which the fund shall be administered.

22 C. Notwithstanding the provisions of Sections  
23 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance  
24 in excess of two hundred fifty thousand dollars (\$250,000) in  
25 the real estate recovery fund shall be transferred to the

1 real estate education and training fund."

2 Section 21. EFFECTIVE DATE.--

3 A. The effective date of the provisions of  
4 Sections 1 through 19 of this act is January 1, 2006.

5 B. The effective date of the provisions of Section  
6 20 of this act is July 1, 2005. \_\_\_\_\_

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